IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1752 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KABIRPANTHI & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR PRANAV G DESAI for Applicant(s) : 1 - 2.
Ms. Falguni Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR YS MANKAD for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 25/01/2007

ORAL JUDGMENT

1. Petitioners are officers of the State Bank of India and, as accused persons in criminal case

No.15/91, they have approached this court under the provisions of section 482 of the Criminal Procedure Code, 1973 (for short, "the Code") for quashing the proceedings of the said criminal case.

2. It was vehemently argued by learned counsel, Mr P.G. Desai that the ingredients of the offences punishable under sections 420 and 114 of Indian Penal Code, 1860 were not made out in the complaint, that a dispute of civil nature was agitated and that the proceedings in the criminal court were an abuse of the process of court. It was fairly conceded that the trial court had taken cognizance of the offences after recording statement of the complainant and the application for discharging the petitioners was dismissed on 12.2.1996 by a reasoned order of learned Chief Judicial Magistrate, Bhuj, Kachchh.

2.1. It was further submitted on the factual aspect of the matter that the original complainant was reported to have passed away

prior to December, 2003 and the civil suit filed by him agitating practically the same grievance was dismissed with costs by learned Civil Judge (S.D.) on 31.12.2003. With the support of that judgment of the civil court, the learned counsel submitted that the alleged cheating on account of reduction of interest rates payable by the bank could not now be proved, since the civil court has clearly held that the original complainant was not entitled to interest at the higher rate, as alleged by him.

3. Learned counsel , Mr B.Y. Mankad, appearing for learned advocate Mr Y.S. Mankad, who was appearing for respondent no.2, the original complainant submitted that he was not getting any instructions and the report received by learned advocate, Mr Desai that the original complainant had passed away, appeared to be correct. He however, assisted the court by submitting that, under the provisions of section 256 of the Code, the complaint could be proceeded if some heirs or

interested persons would come forward to prosecute and proceed further. In absence of such move, the complaint may be dismissed by the trial court.

4. Perusing the original complaint, according to the allegations of the complainant, he had deposited a sum of pounds One lakh in an Indian bank, on the basis of and on the faith that interest @ 13% would accrue. But after making of such deposit, the rate of interest came to be revised and reduced because of which the complainant suffered loss of part of interest. It would have been for the complainant to lead evidence and prove the charges levelled against the respondent but, at this stage, this court cannot take into consideration the defences and subsequent developments, as canvassed on behalf of the petitioners. There is no substance in the argument that the dispute was purely of civil nature and the civil suit having been subsequently decided in favour of the bank, the

petitioners could not be prosecuted. Mr Desai also argued that the cause of action for the complaint had arisen in London and the ingredients of the offences were not disclosed in the complaint. This argument cannot be accepted because of the clear averments in the complaint itself that the amount was deposited in the branch of the bank at Bhuj run or managed by the petitioners and the ingredients of the offences were revealed not only in the complaint itself but in his statement on oath, recorded by the learned Magistrate before issuing the process.

6. Therefore, even though it appears that the original complaint and the present proceedings have become infructuous, the present petition cannot be allowed on any legal consideration. Therefore, it is **dismissed** with the observation that the trial court may proceed in accordance with law and dispose the criminal case as expeditiously as practicable in view of pendency of the proceedings for nearly 17 years.

7. It was submitted by Mr Desai that, in the peculiar facts and circumstances, the trial court may not insist upon personal presence of the petitioners as some of them might have retired now. It is observed in that regard that the trial court may insist upon their personal presence as and when someone comes forward to prosecute the original complaint and if the court does not dismiss the complaint under the provisions of section 256 of the Code. With these observations, Rule is discharged with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp